

**LORI SHRIVER v. WAL-MART STORES, INC., AC 35525**

*Judicial District of New London*

**Negligence; Premises Liability; Whether Plaintiff Proved that Defendant had Notice of Existence of Specific Defect; Whether Award for Future Medical Costs was Excessive.** The plaintiff was injured when the bench in the fitting room of the defendant's Lisbon, Connecticut store collapsed, causing her to fall to the floor. She brought this premises liability lawsuit against the defendant seeking to recover money damages for her injuries. A premises liability lawsuit is one brought against the owner of property by a person who was injured on the property and who claims that the property owner is responsible—or liable—for her injury because the property owner was negligent in maintaining the property. In order to prevail against a property owner in a premises liability suit, a plaintiff must prove (1) that there was a defective or unsafe condition on the defendant's property, and (2) that the defendant had notice of the defect; that is, that the defendant knew or should have known of it. Here, the plaintiff claimed that the defendant was negligent in that it knew or should have known that the bench was defective and presented a danger to customers using the fitting room. At trial, evidence was presented that the bench was installed five years prior to the accident, that it was made of particle board and that it was secured to the walls at both ends in the corner of the dressing room. The bench had no support in the center, and it split down the middle and pulled away from the wall when the plaintiff sat on it while trying on clothes. The defendant's employees testified that, while they inspected the store for visible safety hazards every few hours, the fitting room benches were never inspected for structural soundness. Finally, both the plaintiff and a store employee who inspected the fitting rooms on the morning of the accident testified that they did not see any visible defects in the bench. The jury found in favor of the plaintiff and she was awarded \$654,000 in damages. The defendant appeals, claiming that the judgment should be reversed because the plaintiff failed to prove that the bench was defective and that, even assuming that it was, the plaintiff failed to prove that it had notice of the defect because it knew or should have known of its existence. The defendant argues that, because the plaintiff never proved that the bench was defective by presenting expert testimony that it was structurally unsound, the jury was not entitled to assume that the bench presented a danger from the mere fact that it broke. As to the issue of notice, the defendant claims that it cannot be deemed to have notice that the bench was defective simply because it was alleged that it built the bench. The defendant also points out that the evidence presented at trial established that the bench was not visibly defective, and it claims that it could not have had notice of any latent, or hidden, defect because there had been no previous complaints about the bench and because the plaintiff presented no evidence of government or industry standards regulating the construction of fitting room benches. Finally, the defendant claims that the evidence did not support the jury's award of almost \$210,000 for the plaintiff's future medical expenses and that the jury's award for past medical expenses improperly compensated the plaintiff for charges that were compromised, or "written off," by the plaintiff's medical providers.